



0000107050

ORIGINAL

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

200 FEB -1 P 4: 43

Arizona Corporation Commission

COMMISSIONERSARIZONA CORPORATION COMMISSION
SECRET CONTROL

DOCKETED

FEB - 1 2010

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY

IN THE MATTER OF THE PETITION OF
GARKANE ENERGY COOPERATIVE, INC.
FOR A DECLARATORY ORDER

Docket No. E-01891A-09-0377

STATEMENT OF FACTS
CONCERNING PRIOR
FINANCIAL TRANSACTIONS

As requested at the January 11, 2010 procedural conference, Staff of the Utilities Division of the Arizona Corporation Commission ("Staff") and Garkane Energy Cooperative, Inc. ("Garkane") submit this Statement of Facts. The Statement relates to the secured transactions listed in Exhibit 1 to the Affidavit of Stan Chappell, which was submitted as Exhibit B to Garkane's Petition for Declaratory Order. The transactions are addressed in the same order as they were listed on Exhibit 1 and are referred to as "Transaction No. 1" through "Transaction No. 5."

1. Transaction No. 1 is a Restated Mortgage and Security Agreement between and among RUS, CFC and Garkane, dated November 1, 1999. The catalyst for this transaction was significant financial difficulties encountered by Deseret Generation & Transmission Co-operative ("Deseret") in the 1990s which led Deseret to restructure its RUS debt through CFC, beginning in 1996. As part of that transaction, all six distribution cooperative members of Deseret, including Garkane, were required to refinance existing RUS debt through CFC. Garkane's participation in this refinance was carried out over the course of three years and was

10703-4/2337604v2

1 approved by the Public Service Commission of Utah ("Utah PSC") in the Order attached hereto
2 as Exhibit A. The last step in this refinancing took place in 1999 via the restated agreement at
3 issue in Transaction No. 1.

4 2. Transaction No. 2 is a Loan Agreement in the amount of \$10 million between
5 CFC and Garkane, dated December 22, 2003. This loan is a "Power Vision" loan, which was
6 taken out for the purpose of funding various projects, including acquisition of the Kanab City
7 Power System and asset maintenance. The Utah PSC Order approving the loan is attached
8 hereto as Exhibit B.

9 3. Transaction No. 3 is a Loan Agreement in the amount of \$15 million between
10 CFC and Garkane, dated October 29, 2007. This loan is also a "Power Vision" loan. It was
11 taken out for the purpose of funding various projects, including substation construction, new
12 transmission and distribution facilities, and the FERC re-licensing of Garkane's hydro plant in
13 Boulder, Utah. \$4 million of these funds remain available to Garkane. The Utah PSC Order
14 approving the loan is attached hereto as Exhibit C.

15 4. Transaction No. 4 is a Substitute Secured Promissory Note in the amount of \$4.5
16 million between CFC and Garkane, dated April 22, 2009. This transaction relates to a 1999 loan
17 from CFC (guaranteed by RUS) for the purpose of financing Garkane's new headquarters. It
18 was approved by the Utah PSC in the Order attached hereto as Exhibit D. The purpose of
19 Transaction No. 4 was to remove RUS as the guarantor of the loan. Accordingly, this transaction
20 did not result in Garkane receiving any additional funds or incurring new debt.

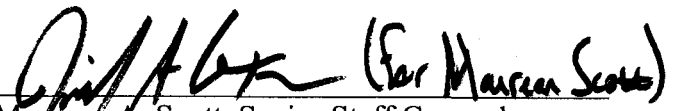
21 5. Transaction No. 5 is the \$5 million Revolving Line of Credit between CFC and
22 Garkane, dated May 18, 2009. This transaction increased Garkane's operating line of credit
23

1 from \$2 million to \$5 million. The Utah PSC Order approving Transaction No. 5 is attached
2 hereto as Exhibit E.

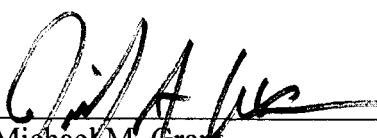
3 6. The current ratio between members located in Utah and in Arizona is provided in
4 the Affidavit of Stan Chappell, attached hereto as Exhibit F.

5 RESPECTFULLY SUBMITTED this ^{1st} day of February, 2010.

6
7 STAFF OF THE UTILITIES DIVISION

8
9 By  (For Maureen Scott)
10 Maureen A. Scott, Senior Staff Counsel
11 Legal Division
12 Arizona Corporation Commission
13 1200 West Washington Street
14 Phoenix, Arizona 85007
15 (602) 542-3402

16
17 GALLAGHER & KENNEDY, P.A.

18 By 
19 Michael M. Grant
20 Jennifer A. Cranston
21 2575 East Camelback Road
22 Phoenix, Arizona 85016-9225
23 Attorneys for Garkane Energy Cooperative, Inc.

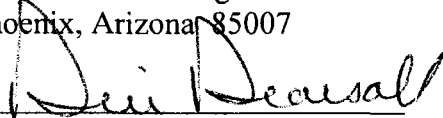
1 **Original and 13 copies** filed this
2 1st day of February, 2010, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

7 **Copy** of the foregoing delivered
8 this 1st day of February, 2010, to:

9 Sarah N. Harpring, Esq., Administrative Law Judge
10 Hearing Division
11 Arizona Corporation Commission
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Maureen A. Scott, Esq., Senior Staff Counsel
15 Legal Division
16 Arizona Corporation Commission
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 
20

21 10703-4/2337604v2
22
23
24

EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

DOCKETED

In the Matter of the Application) DOCKET NO. 96-506-01
of DESERET GENERATION & TRANSMIS-)
SION CO-OPERATIVE, BRIDGER VALLEY)
ELECTRIC ASSOCIATION, DIXIE-ESCA-)
LANTE RURAL ELECTRIC ASSOCIATION,)
INC., FLOWELL ELECTRIC ASSOCIATION,)
INC., GARKANE POWER ASSOCIATION,) REPORT AND ORDER
MOON LAKE ELECTRIC ASSOCIATION,)
INC., and MOUNT WHEELER POWER, INC.)
for Authority to Issue Securities.)

ISSUED: July 3, 1996

By the Commission:

On April 30, 1996, Applicants Deseret Generation & Transmission Co-operative and its members, Bridger Valley Electric Association, Dixie-Escalante Rural Electric Association, Inc., Flowell Electric Association, Inc., Garkane Power Association, Inc., Moon Lake Electric Association, Inc. and Mount Wheeler Power, Inc. filed an application seeking authority pursuant to Utah Code Ann. § 54-4-31 to issue certain securities in connection with a general compromise and workout transaction ("Proposed Transaction"). The Applicants requested Informal Adjudication of the Application under R746-110, Rules of the Public Service Commission, and represented that the matter was anticipated to be unopposed and uncontested. The Applicants requested expedited consideration of the Application, on the grounds that a forbearance agreement with Deseret's principal creditors required regulatory approval prior to July 1, 1996. Finally, Applicants requested a waiver by the Commission of the 20-day tentative period under R746-110-2, for good cause shown. The Applicants have submitted a

summary of the proposed transaction, sworn statements from each of the Applicants, certified documents and other information to establish the facts pertinent to the Application. The Applicants also responded to data requests from the Division of Public Utilities and met informally with representatives of the Division of Public Utilities, the Committee of Consumer Service and Commission Staff.

FINDINGS OF FACT

1. Deseret Generation & Transmission Co-operative ("Deseret") is a wholesale electric generation and transmission cooperative. Deseret's six members, Bridger Valley Electric Association, Dixie-Escalante Rural Electric Association, Inc., Flowell Electric Association, Inc., Garkane Power Association, Inc., Moon Lake Electric Association, Inc. and Mount Wheeler Power, Inc. (collectively, "Members"), are rural electrical cooperatives that provide electric services at retail to their members/owners in the States of Utah, Wyoming, Arizona, Colorado and Nevada.
2. For several years, Deseret has faced financial difficulties. In 1990-1991, Deseret entered into an Agreement Restructuring Obligations ("ARO") with its major creditors ("Creditors"), including the United States of America, Department of Agriculture, acting

through the Rural Utility Services (fka Rural Electrification Administration) ("RUS"), National Rural Utilities Cooperative Finance Corporation and National Cooperative Services Corporation (collectively, "CFC"), and Power Limited Partnership, as successor to Shell Leasing Company ("Owner/Lessor").

3. Deseret's primary assets include a leasehold interest in the personal property assets that comprise the Bonanza Power Plant representing generation rights of approximately 400 MW, an ownership interest in the Hunter II Power Plant representing generation rights of approximately 100 MW ("Hunter II"), transmission lines and rights including a 345 kV line from Bonanza to the Mona substation and three 138 kV lines to substations at Upalco, Vernal and Southwest Rangely, several non-member power sales contracts, wholesale power contracts with its Members, and certain rights relating to the Deserado coal mine and railroad (including a note receivable).
4. Deseret's obligations to its Creditors fall into two general categories:
 - a. Debt. Deseret has debt of approximately \$700 million to RUS and approximately \$120 million to CFC, secured pari passu by the bulk of Deseret's assets, including Hunter II, transmission assets,

non-member contracts, member contracts, Deserado mine assets and real property interests underlying the Bonanza Power Plant (the "Mortgaged Assets").

- b. Leases. Deseret owes approximately \$750 million net present value in lease-related obligations to the Owner/Lessor ("Lease Obligations") for certain personal property assets and contract rights that comprise and are associated with the Bonanza Power Plant ("Lease Assets"). CFC holds a first priority security interest against the Lease Assets as a result of CFC financings and guarantees on behalf of the Owner/Lessor.
5. Deseret has undergone a significant restructuring of its operations, including a reduction of nearly 40% of its workforce with a projected reduction in annual operating, maintenance and production costs of more than \$4 million. Deseret also solicited and oversaw a restructuring of the operations of its coal supplier, Western Fuels-Utah, Inc., including a reduction of nearly 50% of the workforce and a projected reduction of about 30% in coal production costs representing nearly \$10 million per year.
6. Deseret is in default under certain of its agreements. Deseret, the Members, CFC and RUS have negotiated the

Proposed Transaction to effect a general restructuring of Deseret's obligations. RUS and CFC agreed to forbear exercising certain remedies against Deseret based on obtaining necessary regulatory approvals before July 1, 1996. Deseret and the Members thus requested approval prior to July 1, 1996. More recently, Applicants have indicated that, due in large part to the anticipated receipt of timely regulatory approvals, RUS and CFC have agreed to extend their forbearance to September 6, 1996.

7. As part of the Proposed Transaction, RUS has agreed to compromise all obligations owed to RUS from Deseret or the Members on account of Deseret or the existing wholesale power contracts ("RUS Obligations") in exchange for a payment of approximately \$250 million. CFC will receive an assignment of all such obligations owed to the RUS or the right to collect all amounts owed or received on account of those obligations, together with existing security interests in the Mortgaged Assets.
8. As part of the Proposed Transaction, the Members have agreed to pay CFC \$55 million, collectively, in exchange for the right to receive a share of all amounts collected or received on account of the RUS Obligations. Each Member's share of the \$55 million payment is reflected on Exhibit "A" and will be funded by loans from CFC ("Member

Compromise Loans"), which will be amortized over a period not to exceed 30 years, will bear interest at rates equal to CFC's standard loan program rates to be established at the time of closing, and will be secured by a lien on substantially all of the Member's assets. These loans will cease to be obligations of the Members after 12 years, assuming no default. CFC will also extend a line of credit to each Member ("Member Lines of Credit") which can be used to make the minimum loan payments or for other general corporate purposes.

9. As part of the Proposed Transaction, each Member will also refinance, over a period of up to approximately one year, the Member's loans and obligations currently owed to RUS, through loans from CFC totaling approximately \$50 million for all Members collectively ("Member Refinancing Loans"). The approximate amount of each Member's Member Refinancing Loans is reflected on Exhibit "A". The Member Refinancing Loans will be amortized over a period of up to 35 years, will bear interest at rates equal to CFC's standard loan program rates to be established at the time of closing, and will be secured by a lien against substantially all of the Member's assets.
10. Deseret's current rate structure produces a high incremental rate that discourages load growth. As part

of the Proposed Transaction, Deseret will implement a new Member wholesale rate structure ("New Rate Structure") designed by Deseret and the Members to provide a competitive incremental rate, to promote load growth and otherwise to enhance the ability of the Members to compete for new and existing loads. The New Rate Structure will also include an integration of Deseret resources and Member resources, resulting in efficiencies and elimination of conflicting incentives between Deseret and the Members.

11. Deseret's current all-requirements Member contracts provide that Member rates must be set at a level sufficient to repay all of Deseret's indebtedness without regard to the viability of such rates in today's competitive marketplace. As part of the Proposed Transaction, new Member wholesale power contracts (or amendments to the existing contracts) will be executed between Deseret and its Members that will eliminate the connection between Member rates and Deseret debt. Members will be required to purchase their electric requirements from Deseret under the new contracts but Member rates will be adjusted based on changes in production costs and competitive market forces rather than based on the level of Deseret debt.

12. Deseret's obligations to its Creditors, including the Lease Obligations, will be restructured as part of the Proposed Transaction to provide that minimum debt service payments will be consistent with cash-flow projections derived from Deseret's cash flow model. CFC will also extend a \$20 million line of credit to Deseret ("Deseret Line of Credit"), which can be used for debt service and general corporate purposes.
13. The Applicants analyzed various alternatives to the Proposed Transaction, including proposals to purchase all or portions of Deseret's assets or to merge with another power supply cooperative. Applicants have represented that these alternatives were rejected because they failed to provide a return acceptable to the Creditors, failed to provide a rate structure acceptable to the Members, or otherwise failed to satisfy the needs of Deseret, the Members and the Creditors.
14. The Applicants represent that reorganization of Deseret under federal bankruptcy laws has also been evaluated as an alternative. Deseret, under the direction of its Board, has not elected to seek bankruptcy reorganization in light of the significant costs and delay, rate risks and other uncertainties attendant to such a course of action.

15. While the anticipated payments from Deseret to the Members on account of the RUS Obligations (which are to be used to pay the Member Compromise Loans) cannot be assured, a number of factors mitigate the risk to the Members, including the following: (I) payments from Deseret on account of the RUS Obligations, together with capital credits from CFC, are projected to equal or exceed the minimum payments due CFC by the Members with respect to the Member Compromise Loans (ii) the Member Lines of Credit will be available to Members in the event of a shortfall; (iii) Deseret's debt and lease obligations will be restructured to be consistent with Deseret's cash flow projections; (iv) Deseret's payment obligations even after closing may be adjusted to reflect potential revenue changes relating to certain large loads or the sale of Deseret assets; (v) Deseret intends to enter into a power marketing arrangement that will help generate cash flow sufficient to meet Deseret's revised payment obligations for at least the first five years; (vi) The Deseret Line of Credit can be used to avoid default as a result of any short term or temporary financial difficulties; (vii) assuming no default, twelve years after closing each Member will have an option to transfer its interest in the RUS Obligations to CFC in

full discharge of the Member's Member Compromise Loans; and (viii) each Member will receive the benefit of security in certain of Deseret's assets to help offset any potential loss.

16. Prompt implementation of the New Rate Structure is very important to the Members. Increased sales will be a key to reducing per unit distribution expenses under the New Rate Structure. The Members believe that the New Rate Structure will enable the Members to better retain existing loads and to attract new loads.
17. Each Applicant has represented that its articles of incorporation require approval by its Board of Directors in order to issue promissory notes and security agreements in connection with the Proposed Transaction. Each Applicant has represented that its Board of Directors has passed a resolution approving in concept the issuance of securities and the granting of security interests in connection with the Proposed Transaction. Prior to execution, each Applicant's Board of Directors will be required to approve all final documents and agreements to be executed by that Applicant.
18. The Division of Public Utilities filed its Memorandum in this docket dated June 14, 1996, recommending approval of the Application. The Division's Memorandum recommends

that the Applicants be required to inform the Commission and the Division each time an Applicant accesses a line of credit to service the restructured debt. The Division's Memorandum also recommends that Deseret be required to certify by affidavit that the final restructuring plan adopted is not materially different from the restructuring plan filed with the Commission and to provide an Executive Summary of the final restructuring plan, including copies of executed restructuring documents and contracts.

CONCLUSIONS OF LAW

1. Each of the Applicants is a public utility subject to the jurisdiction of this Commission.
2. All legal and factual prerequisites and requirements for the issuance of this Order have been satisfied.
3. Participation by each of the Applicants in the Proposed Transaction as described herein is in the public interest. Although not wholly without risk, the Members' wholesale supply will be more stable, rate risks will be reduced and competitive incremental rates will be available. Deseret and its Members should thus be in a strengthened position to provide reliable, reasonably priced services to consumers.
4. Participation by each Applicant in the Proposed

Transaction, including the proposed issuance of securities and security interests in connection therewith, in exchange for the projected benefits of the same is (i) for lawful and proper purposes; (ii) within each Applicant's corporate powers; (iii) consistent with the public interest, sound financial practices and the proper performance of each Applicant's public service; and (iv) designed to enhance and not impair each Applicant's ability to perform its public services.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. Deseret and each of the Members is hereby authorized to participate in the Proposed Transaction as generally described in this Report and Order, or on other terms and conditions substantially consistent with this Report and Order.
2. Each of the Members is hereby authorized to issue securities in the form of promissory notes to CFC for the Member Compromise Loans in approximately the amounts specified in Exhibit "A," and to provide security interests in its assets to secure repayment of the same as generally described in this Report and Order, or on other terms and conditions substantially consistent with this Report and Order.

3. Each of the Members is hereby authorized to issue securities in the form of promissory notes to CFC for the Member Refinancing Loans in approximately the amounts specified in Exhibit "A," and to provide security interests to secure repayment of the same as generally described in this Report and Order, or on other terms and conditions substantially consistent with this Report and Order.
4. Each Member is hereby authorized to secure a perpetual secured line of credit from CFC in an amount approved by its Board of Directors, ranging up to \$7,000,000, and to provide security interests to secure repayment of the same. Each Member shall inform the Commission and the Division each time it accesses its line of credit for purposes of servicing its Member Compromise Loans or Member Refinancing Loans.
5. Deseret is hereby authorized to issue securities in the form of agreements to restructure its obligations under terms and conditions generally as set forth herein, including promissory notes, replacement notes, security interests and other documents.
6. Deseret is hereby authorized to secure a line of credit from CFC in an amount of approximately \$20,000,000 and to provide security interests to secure repayment of the

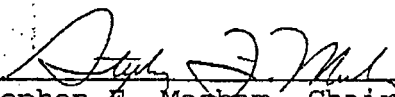
same, all under terms and conditions generally as described in this Report and Order. Deseret shall inform the Commission and the Division each time it accesses its line of credit for purposes of servicing its restructured debt obligations.

7. Each Applicant is hereby authorized to execute such documents and take such actions as may be reasonably necessary or convenient to the completion of the Proposed Transaction.
8. Deseret shall certify by affidavit that the final restructuring plan adopted is substantially consistent with the restructuring plan filed with the Commission. Deseret shall also provide an Executive Summary of the final restructuring plan, together with copies of executed restructuring documents and contracts.
9. Nothing in this Order shall be construed to obligate the State of Utah to pay or guarantee in any manner whatsoever any securities authorized, issued, assumed or guaranteed hereunder.
10. For good cause shown, the 20 day tentative period under R746-110-2 is hereby waived.


DOCKET NO. 96-506-01

-15-


DATED at Salt Lake City, Utah, this 3rd day of July,
1996.



Stephen F. Mecham, Chairman




Constance B. White, Commissioner



Clark D. Jones, Commissioner

Attest:



Julie Orchard
Commission Secretary

DOCKET NO. 96-506-01

-16-

EXHIBIT "A"

<u>Member</u>	<u>Approximate Member Refinancing Loans (Before Discount)</u>	<u>Approximate Share of Member Compromise Loans</u>
Bridger Valley	\$ 6,808,474.00	\$ 6,844,565
Dixie-Escalante	\$ 2,831,937.00	\$12,473,092
Flowell	\$ 232,185.39	\$ 1,519,725
Garkane	\$12,978,576.00	\$ 7,428,573
Moon Lake	\$18,870,444.41	\$15,958,391
Mount Wheeler	\$21,249,546.00	\$10,775,651

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

STATE OF UTAH)
) ss.
County of Salt Lake)

I hereby certify that the foregoing consisting of 16 pages numbered
1 to 16 inclusive, is a true and correct copy of the original.

DOCKET NO. 96-506-01, REPORT AND ORDER, In the Matter of the
Application of DESERET GENERATION & TRANSMISSION CO-OPERATIVE, BRIDGER
VALLEY ELECTRIC ASSOCIATION, DIXIE-ESCALANTE RURAL ELECTRIC ASSOC-
IATION INC., FLOWELL ELECTRIC ASSOCIATION, INC., GARKANE POWER
ASSOCIATION, MOON LAKE ELECTRIC ASSOCIATION, INC., and MOUNT WHEELER
POWER, INC. for Authority to Issue Securities.
In the foregoing entitled matter or cause, now of record or on file in the office of the Public
Service Commission of Utah.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said
Commission this 10th day of October, 19 96


Secretary of said Commission

PSC-82009
BP-CN0014

EXHIBIT B

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of GARKANE ENERGY to Approve Long Term Financing with the National Rural Utilities Finance Corporation))))	<u>DOCKET NO. 03-028-01</u> <u>ORDER</u>
--	------------------	---

ISSUED: December 5, 2003

By The Commission:

Garkane Energy ("Applicant") filed its application October 27, 2003, for approval of a \$10,000,000 loan-financing arrangement with the National Rural Utilities Finance Corporation. This financing package is a CFC "Power Vision" loan which allows Applicant to draw against the loan amount for capital as needed for project financing. Applicant will use the financing for its four-year construction work plan, roll over its current line of credit and possibly use the funding to acquire Kanab City's municipal electric system, if approved by the citizens of Kanab. Applicant's Board of Directors approved this financing package on September 22, 2003, at their regularly scheduled meeting. The original application was referred for review to the Division of Public Utilities, Utah Department of Commerce (DPU), which filed a memorandum November 19, 2003, recommending approval of the proposal.

The financing appearing to be in the public interest and no opposition having been received, the Commission enters the following

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- The Application for approval of the long-term financing package, as described in the Application, is granted and approval is hereby given.

DATED at Salt Lake City, Utah, this 5th day of December, 2003.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

EXHIBIT C

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Garkane
Energy Cooperative, Inc. for Authority to
Issue Securities

)
)
)
)
)

DOCKET NO. 07-028-01

REPORT AND ORDER APPROVING
ISSUANCE OF SECURITIES

ISSUED: November 2, 2007

SYNOPSIS

No detriment to the public interest appearing, the Commission granted the authority sought by the Applicant with certain conditions.

By the Commission:

PROCEDURAL HISTORY

On August 31, 2007, Applicant Garkane Energy Cooperative, Inc. filed an application seeking authority pursuant to *Utah Code Ann.* § 54-4-31 to issue certain securities in the form of a long-term Loan Agreement and a related Secured Promissory Note in the amount of up to approximately \$15,000,000.00 (the "Long-Term Loan Facility"). Applicant requested Informal Adjudication of the Application under R746-110, Rules of the Public Service Commission, and represented that the matter was anticipated to be unopposed and uncontested. The Applicant further requested expedited consideration of the Application on the grounds that its current line of credit is expected to expire shortly and would, in all events, be insufficient for its anticipated cash requirements under anticipated work plans, and that sufficient advance time will be needed prior to year end to provide necessary evidence to Garkane's secured creditor that the necessary approval(s) have been obtained to circulate the executed documents and this

DOCKET NO. 07-028-01

-2-

Report and Order to give effect to the Long-Term Loan Facility in timely fashion. Finally, Applicant requested a waiver by the Commission of the 20-day tentative period under R746-110-2 for good cause shown on the basis that the Long-Term Loan Facility, in order to provide maximum protection and flexibility to Applicant, must be final and fully enforceable in full force and effect at all times without being subject to any appeal or protests in order to allow Applicant to meet its anticipated financing needs.

Applicant has submitted copies of the relevant documents, certified and verified pursuant to the Verified Application, and other information to establish the facts pertinent to the Application.

On October 25, 2007, the Division of Public Utilities filed a memorandum detailing its investigation of the Application and recommending approval of the same.

Since no meritorious opposition has been raised, and Applicant has made out its *prima facie* case in support of the Application, there appears no reason to convene an evidentiary hearing on the matter. Accordingly, the Commission, having been fully advised in the premises, enters the following Report, containing Findings of Fact, Conclusions of Law, and the Order based thereon.

FINDINGS OF FACT

1. In October, 1996, Applicant entered into a \$2,000,000.00 line of credit (the "Existing Line of Credit") with the National Rural Utilities Cooperative Finance Corporation ("CFC") which can be used for general corporate purposes. The Commission gave Applicant authorization to enter into and to secure the Existing Line of Credit pursuant to its Report and

DOCKET NO. 07-028-01

-3-

Order dated July 3, 1996 in Docket No. 96-506-01. Applicant states it has not drawn on the Existing Line of Credit to date.

2. In recent months, Applicant has undertaken a number of capital improvement projects which will upgrade and replace aging utility plant and equipment, and extend facilities for the delivery of electric power and service within its service area. Applicant has already begun to construct additional facilities to increase the reliability of the system and represents that it will require additional source(s) of long-term financing to sustain these projects as well as other planned improvements. Applicant represents that its financing requirements in the coming four years will easily exceed the \$2,000,000 that would be available to it under the Existing Line of Credit, and anticipates that its financing requirements could exceed that amount as soon as within the next 30-60 days.

3. The Long-Term Loan Facility will supplement the Existing Line of Credit, and can be used as an additional source of funds required for Applicant's electric work plan(s) as Applicant may choose to make use of it. The Long-Term Loan Facility can also be used as a source of financing for potential acquisition(s) of portions of electric distribution assets currently owned by municipal systems in Utah and Arizona located in areas currently certificated to be served by Applicant, but will only be used for such purposes if and when: (i) all required and necessary approvals have been obtained to complete any such acquisition(s); and (ii) Applicant's Board of Directors has approved all material terms and conditions to any such acquisitions.

4. The relevant terms of the Long-Term Loan Facility primarily include the following:

DOCKET NO. 07-028-01

-4-

- a. The maximum cumulative amount of borrowing (each such borrowing an "Advance") authorized under the terms of the Long-Term Loan Facility will be approximately \$15,000,000.00;
- b. The initial term of the Long-Term Loan Facility will be forty (40) years from the date of the Secured Promissory Note to be executed and delivered by Applicant to CFC to evidence the Long-Term Loan Facility (the "Maturity Date");
- c. The amortization period ("Amortization Period") of each Advance under the Replacement Facility will be thirty-five (35) years, unless specified otherwise in writing at Garkane's election at the time of each such Advance; provided that in no event will the Amortization period for any Advance extend beyond the Maturity Date;
- d. The initial period under which Advances may be made will be for five (5) years from the date of the Long-Term Loan Facility;
- e. For each Advance under the Long-Term Loan Facility, Applicant may designate either a Fixed or a Variable interest rate. For those portions of Advances which Applicant elects a Fixed Rate, the relevant rate of interest will be such fixed interest rate(s) that CFC publishes and notifies Applicant in advance are offered from time to time for CFC's loans to its members which are similarly classified pursuant to CFC's policies and procedures then in effect. For those portions of Advances which Applicant elects a Variable Rate, the relevant rate of interest will be the rate established by CFC for variable interest rate long-term loans similarly classified pursuant to the long-term loan programs established by CFC from time to time.

DOCKET NO. 07-028-01

-5-

f. The Long-Term Loan Facility will be secured by a first-lien mortgage on Applicant's electric system and assets.

g. Payments under the Long-Term Loan Facility will be due quarterly in February, May, August, and November, unless agreed otherwise between the parties. All amounts outstanding and unpaid as of the Maturity Date will be due and payable on the Maturity Date.

5. Applicant states it has analyzed and considered various alternatives to the proposed Long-Term Loan Facility, including accessing funds available under the Existing Line of Credit. The terms, options, and rates available for long-term financing under the Long-Term Loan Facility are materially better, and more advantageous to Applicant, than the terms of repayment for draws submitted under the Existing Line of Credit. Applicant has represented that the proposed Long-Term Loan Facility represents the best available means available to Applicant to acquire a flexible financing source for ongoing capital projects as well as a potential source of financing for future acquisitions of certain municipal power systems, should such acquisitions occur. The Long-Term Loan Facility was approved by Applicant's Board of Trustees at a regularly scheduled meeting of the board during July, 2007.

CONCLUSIONS OF LAW

1. It is in the public interest to convert this matter to an informal proceeding, pursuant to § 63-46b-4(3), Utah Code Annotated 1953, as amended.
2. Applicant is a public utility subject to the jurisdiction of this Commission.
3. This Commission has jurisdiction over the Application pursuant to the provisions of § 54-4-31(1), UCA 1953, as amended.

DOCKET NO. 07-028-01

-6-

4. Execution and delivery of the Long-Term Loan Facility as described herein is in the public interest.

5. Pursuant to Rule 746-110-2, good cause exists to waive the 20-day tentative period for an order issued in an informally adjudicated proceeding. Accordingly, this order will become effective on the date of issuance.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. This matter be, and it is, converted to an informal proceeding pursuant to §63-46b-4(3), UCA 1953, as amended.

2. Garkane Energy Cooperative, Inc., is hereby authorized to execute and to secure the Long-Term Loan Facility in the amount of approximately \$15,000,000, on substantially the same terms and conditions set forth in this Report and Order.

3. Applicant is hereby authorized to execute and deliver such documents and take such actions as may be reasonably necessary or convenient to the completion of the Proposed Long-Term Loan Facility.

4. Nothing in this Order shall be construed to obligate the State of Utah to pay or guarantee in any manner whatsoever any securities authorized, issued, assumed, or guaranteed hereunder.

5. The authority granted herein is effective the date of this Order.

Pursuant to Utah Code §§63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission

DOCKET NO. 07-028-01

-7-

within 30 days after the effective date of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code §§63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 2nd day of November, 2007.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#55204

EXHIBIT D

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of)
GARKANE POWER ASSOCIATION,)
INC., for Authority to Borrow \$4,546,000)
from the National Rural Utilities)
Cooperative Finance Corporation under the)
Guaranteed Loan Program)

DOCKET NO. 99-028-01

REPORT AND ORDER

ISSUED: January 27, 2000

By The Commission:

PROCEDURAL HISTORY

Garkane Power Association ("Applicant") filed its application May 18, 1999, for approval of a proposal to borrow \$4,546,000 from the National Rural Utilities Cooperative Finance Corporation ("NRUCFC"). Part of the proceeds of the loan was to finance a new headquarters building for Applicant. That part of the proposal engendered opposition culminating in a settlement agreement filed with the Commission December 7, 1999. The original application and settlement agreement were referred for review to the Division of Public Utilities, Utah Department of Commerce (DPU), which filed a memorandum January 13, 2000, recommending approval of the proposal as modified by the settlement agreement.

Since the controversy between Applicant's board and its dissenting members has been resolved, and the proposal does not appear to contravene public policy, we have determined to dispose of the matter without further proceedings. Applicant having made out its case, as modified by the settlement agreement, we enter the following

ORDER

WHEREFORE, IT IS HEREBY ORDERED, that:

- The settlement agreement dated November 29, 1999, between Applicant and intervenors Mark Fuellenbach, Marjorie P. Fuellenbach, Vernon D. Roundy, Kip L. Wilson, Dennis K. Jorgensen, Milton Taft, Jeff Christensen, Stan C. Powell, Brent Bastian, Alvin H. Hardman, Keith Max Waters, and Brad Staples be, and it is, approved.
- As modified by the aforesaid settlement agreement, the Application for authority to borrow from the NRUCFC be, and it is, granted.

DATED at Salt Lake City, Utah, this 27th day of January, 2000.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

EXHIBIT E

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Garkane
Energy Cooperative, Inc., for Approval of a
CFC Line of Credit

)
)
)
)

DOCKET NO. 09-028-01
REPORT AND ORDER

ISSUED: March 30, 2009

By The Commission:

On January 12, 2009, Garkane Energy Cooperative, Inc. (Garkane or the Company) filed its Application for approval of its line of credit (LOC) with the National Rural Utilities Cooperative Finance Corporation (CFC), raising its limit from \$2 million to \$5 million.

On February 25, 2009, the Division of Public Utilities (Division), having reviewed the Company's current financials, and attachments to the Company's Application, filed its analysis recommending approval of the Application. In support of its recommendation, the Division submitted information gathered from the following: 1) Annual Reports of Garkane Energy Cooperative, Inc. for years ending December 31, 2004 through December 31, 2007; 2) financial statements of the Company for the eleven months ending November 30, 2008; 3) attachments filed by the Company with the Application including the "Existing Line of Credit"; and 4) telephone conversations with Garkane's management, on February 4 and February 18, 2009.

The Division summarized the financial history of the company from 2004 to 2007. On average, revenues increased by 5.13%. Operating expenses also increased by 3.68%. Interest expenses also increased. Net income has decreased each year for the four-year period reviewed. The main cause for the increase in interest expense and net income decrease is the

increase in long-term debt taken on by the Company to update and expand property, plant, and equipment. Liabilities have increased much faster than current assets, growing at nearly 15 percent annually. The Company's asset to liability ratio has declined each year from 2004 to 2007, and profitability ratios have also decreased. The Company will attempt to increase profitability by possibly increasing rates by 10% this year to cover high increases in maintenance and expenses, and also by reducing such expenses.

In an attempt to meet increased demand, the Company plans to purchase the electric distribution system of the "Twin Cities"—Hilldale, Utah and Colorado City, Arizona. It intends to then re-sell a portion of the system to cover the purchase. Additionally, the Division feels that, despite significant downturns in profitability for the 2008 year, the Company does have a viable plan to increase profitability for the 2009 year. The Division prepared two financial forecasts for the Company: one forecast assuming the Company was able to sell a portion of the Twin Cities' system and the other assuming it was not. Taking into account the Company's plans for increasing profitability, controlling expenses, and taking the Company's forecasted budget into account, under both scenarios, the Company would be able to meet the increased debt load and still be able to increase profitability.

The Division did not analyze the Company's decision to enter into the LOC agreement with the CFC. Generally, however, the Division relied upon the Company's business expertise and found that it should recommend approval of the increase in LOC based on the following factors:

DOCKET NO. 09-028-01

-3-

- A. The Company, which has total access to financial information about its operations and budgets has conducted an evaluation and concluded that this is the most beneficial option available.
- B. The Company represents the Board of Trustees has approved the proposed transaction at its December 15, 2008 meeting.
- C. The Company has the ability to raise customer charges, if necessary, in order to meet its financial obligations. As mentioned above, Garkane Power is contemplating a 10 percent rate increase for this summer.
- D. Attached as Exhibit 1, in 5 pages, are financial statements of the Company for the years 2004 through 2007. These financial statements are supplied to the Division on an annual basis. The Division has not performed a detailed financial analysis of the Company. However, based upon these financial statements it appears the Garkane has been financially stable until the recent operating loss. The Company expects to be profitable in 2009. Despite the operating loss in 2008, Garkane Power has been able to meet its financial obligations.
- E. The two forecasts prepared by the Division both suggest that the Company should be able to handle a moderate capital expenditure program as well as the property acquisition of the Twin Cities.

Therefore, based on the findings submitted by the Division, and the Application submitted by the Company, the Commission finds that the proposed increase in the line of credit will not harm the State of Utah, its citizens, or the Utah customers of Garkane and is therefore in the public interest.

DOCKET NO. 09-028-01

-4-

ORDER

The Commission orders as follows:

1. The increase in the line of credit is approved;
2. Pursuant to Utah Code § 63G-4-301 and 54-7-15, an aggrieved party may request agency review or rehearing of this Order by filing a written request for review or rehearing with the Commission within 30 days after the issuance of the Order.

Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Utah Code §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 30th day of March, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#61244

EXHIBIT F

AFFIDAVIT OF STAN CHAPPELL

STATE OF UTAH)
) ss.
County of Wayne)

STAN CHAPPELL, being first duly sworn, states under oath that:

1. I am the Finance Manager for Garkane Energy Cooperative Inc. ("Garkane"). As such, I have personal knowledge of the matters set forth herein.

2. As of year end 2009, Garkane's system customer total was 12,577. Of these, 1,390 (approximately 11%) are located in Arizona and 11,187 are located in Utah.

Stan Chappell
Stan Chappell

SUBSCRIBED AND SWORN to before me this 22 day of January, 2010, by Stan Chappell.

Amelia Blanton
Notary Public

My Commission Expires:

5-6-11
2340072/10703-4